# INDEX


| | Page |
|---|---|
| Opinions below | 1 |
| Jurisdiction | 1 |
| Question presented | 1 |
| Statutes involved | 2 |
| Statement | 2 |
| Argument | 3 |
| Conclusion | 12 |
| Appendix | 13 |


## CITATIONS


Cases:

*Plankinton* v. *United States*, 267 F. 2d 278 ... 12

*Rosenman* v. *United States*, 323 U.S. 658 ... 4, 8–9, 10

*Schmidt* v. *Commissioner*, 272 F. 2d 423 ... 3, 10, 11

Statutes:

Current Tax Payment Act of 1943, 57 Stat. 126 ... 4

Internal Revenue Code of 1939 (26 U.S.C., 1952 ed.):

§ 53(a) ... 6

§ 58 ... 2, 3, 10, 13

§ 58(a) ... 4, 13

§ 58(b) ... 4

§ 58(d) ... 4

§ 59 ... 2, 3, 9, 10, 13

§ 59(a) ... 4, 5, 13

§ 59(d) ... 5, 9, 10, 13

§ 60 ... 2, 3, 14

§ 60(a) ... 4, 14

§ 322 ... 2, 4, 14

§ 322(a) ... 5, 14

Statutes—Continued


| | Page |
|---|---|
| Internal Revenue Code of 1939—Continued | |
| § 322(b) | 3, 6, 8, 14 |
| § 322(e) | 6, 7, 8, 10, 11, 12 |
| § 3770 | 2, 15 |
| § 3770(c) | 5, 15 |
| § 3771(b) | 6 |
| § 3771(f) | 6 |
| Internal Revenue Code of 1954 (26 U.S.C., 1958 ed.): | |
| § 6513(b) | 11, 12 |
| Revenue Act of 1942, § 172(e), 56 Stat. 798 | 7 |
| Miscellaneous: | |
| 89 Cong. Rec. 4285–4286 | 7 |
| H. Rep. No. 401, 78th Cong., 1st Sess., p. 36 | 7 |
| H. Rep. No. 510, 78th Cong., 1st Sess., p. 54 | 7 |
| S. Rep. No. 221, 78th Cong., 1st Sess., p. 40 | 7 |
| S. Rep. 1622, 83d Cong., 2d Sess., p. 587 | 11 |

# In the Supreme Court of the United States

OCTOBER TERM, 1963

No. 242

ROBERT L. MILLER AND MILDRED M. MILLER,
PETITIONERS

*v.*

UNITED STATES OF AMERICA

*ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE TENTH CIRCUIT*

## BRIEF FOR THE UNITED STATES IN OPPOSITION

### OPINIONS BELOW

The opinion of the district court is reported at 202 F. Supp. 650. The opinion of the court of appeals (Pet. A1–A10) is reported at 315 F. 2d 354.

### JURISDICTION

The judgment of the court of appeals was entered on March 1, 1963. (Pet. A1.) A petition for rehearing was denied on April 1, 1963. The petition for a writ of certiorari was filed on June 26, 1963. The jurisdiction of this Court is invoked under 28 U.S.C., Section 1254.

### QUESTION PRESENTED

Whether the taxpayers' claim for refund of amounts paid by them as estimated federal income tax was barred by the statute of limitations.

## STATUTES INVOLVED

The pertinent provisions of §§ 58, 59, 60, 322, and 3770 of the Internal Revenue Code of 1939 are set forth in the Appendix, *infra*, pp. 13–15.

## STATEMENT

Robert L. Miller and his wife are Wyoming ranchers. On January 15, 1953, they sent a check for $32,000 to the District Director of Internal Revenue. The check bore the notation, "For income tax." On January 14, 1954, they sent a second check, also for $32,000, payable to the District Director. The second check bore the notation "Income tax estimate." Neither check was accompanied by a declaration of estimated income tax or any other document. The District Director credited each check to the taxpayers' account as representing a payment in full of estimated tax for the taxable years 1952 and 1953, and assessments in like amounts were made against the taxpayers in the normal course of office procedure. The assessment certificates were dated February 6, 1953, and February 5, 1954, respectively. (Pet. A3–A4.)

The taxpayers filed tax returns for the years 1952 and 1953 on February 15, 1960. The returns showed no tax due for either year. The Commissioner has not determined that the taxpayers owed any tax for either year. (Pet. A4.)

The taxpayers filed claims for refund of the two $32,000 payments at the same time that they filed their returns. Each refund claim stated that the amounts were "paid * * * for Declaration of Esti-

mated Tax." The refunds were disallowed by the Commissioner on the ground that the amounts claimed were barred by the statute of limitations. (Pet. A4.) The district court held the claims not barred, but the court of appeals reversed, holding that the refund claims were out of time under § 322(b)(2)(A) of the Internal Revenue Code of 1939.

## ARGUMENT

The decision below is correct and the contrary decision of the Ninth Circuit in *Schmidt* v. *Commissioner*, 272 F. 2d 423, was not only reached without consideration of the relevant statutory provisions but is in any event now precluded by the changed wording of the 1954 Code. Certiorari should therefore be denied notwithstanding the conflict of decisions.

1. Although the checks were not accompanied by the required declarations of estimated tax, it was stipulated by the parties that the $64,000 was "paid as estimated tax for the years 1952 and 1953" and petitioners do not claim that anything turns upon the absence of the declarations (R. 22, ¶13; see Pet. 7, A6).[1] Nor did petitioners impose any special restrictions upon the application of the payments. We may accordingly deal with the case as one involving the declaration and payment in the ordinary course of estimated income taxes under §§ 58–60 of the Internal Revenue Code of 1939. The application to such payments of the provisions governing the allow-

[1] Were anything to turn upon the lack of a declaration, moreover, the case would be limited in importance to that fortuitous and unusual circumstance and would for that reason not warrant review here.

ance of refunds (§ 322), in turn, leaves no doubt that the recovery of the payments made here was barred by the time the claims for refund were filed. The analogy petitioners seek to draw between estimated income tax payments and the "deposit" on account of estate taxes which was held not to start the statute of limitations running in *Rosenman* v. *United States*, 323 U.S. 658, simply overlooks the express statutory provisions defining the nature of the estimated tax.

*a.* Section 58 of the Code[2] imposes upon each individual with income in excess of stated amounts the duty to "make a declaration of his estimated tax for the taxable year" (§ 58(a)). The declaration must state the amount which the taxpayer "estimates as the amount of tax under this chapter for the taxable year," and the excess of that amount over his estimated credits for withholdings "shall be considered the estimated tax for the taxable year" (§ 58(b)). Section 59 prescribes the times at which the "estimated tax shall be paid." Normally, the declaration is required to be filed on March 15 of the taxable year (§ 58(d)(1)), and in that event the estimated tax is required to be paid in quarterly installments the last of which is due on January 15 of the following year (§ 59(a)(1)). In the case of persons, such as petitioners, who derive more than two-thirds of their income from farming, however, the declaration need not be filed until January 15 of the following year (§ 60(a)), in which event "the estimated tax shall

[2] The provisions relating to the declaration and payment of estimated taxes were added to the 1939 Code by the Current Tax Payment Act of 1943, 57 Stat. 126.

be paid in full at the time of the filing of the declaration" (§ 59(a)(4)). The application of estimated tax payments is governed by § 59(d):

> (d) *Payment as part of tax for taxable year.*—Payment of the estimated tax, or any installment thereof, shall be considered payment on account of the tax for the taxable year. Assessment in respect of the estimated tax shall be limited to the amount paid.

In short, taxpayers have an independent duty to pay "the estimated tax" as such on the dates prescribed; its payment is considered "payment on account of the tax for the taxable year"; and an immediate assessment, in the amount of the payment, is contemplated. In no sense is the required payment of the estimated tax merely a "deposit" to be held in suspense for future application as a tax payment only if and when the final return for the year is filed. It is a completed payment of tax, and the fact that it exceeds the taxpayer's true tax liability for the year as finally reported or determined establishes only that there has been an "overpayment" of tax subject to the refund procedures of the Code.

*b.* In their application to estimated tax payments, the refund provisions are explicit. Section 322(a) authorizes a refund whenever there has been "an overpayment of any tax imposed by this chapter."[3]

[3] An "amount paid as tax" may be an "overpayment" for that purpose even though, as is claimed here, "there was no tax liability in respect of which such amount was paid" (§ 3770(c)). That provision confirms that the refund procedure is the proper remedy for mistakes as to the existence of a tax liability as well as for mistakes as to the amount of liability. For its history, see Pet. A7, n. 11.

Section 322(b)(2)(A), however, limits the allowable refund (when, as here, the claim for refund is filed within three years after the return is filed) to "the portion of the tax paid * * * during the three years immediately preceding the filing of the claim" Section 322(e) then provides:

> * * * For the purposes of this section, any amount paid as estimated tax for any taxable year shall be deemed to have been paid not earlier than the fifteenth day of the third month following the close of such taxable year [*i.e.*, the day on which the annual return is due, § 53(a)].

That provision also governs the "date of the overpayment" from which interest on the refund is payable (§ 3771(b)(2) and (f)).

That amounts paid "as estimated tax" in excess of the taxpayer's true tax liability for the year are "overpayments" the recovery of which is governed by the refund procedures (and their limitations) is confirmed by the inclusion in § 322(e) of a special rule fixing a constructive date of payment of estimated taxes for that purpose. The only possible room for doubt in applying those provisions derives from the fixing of the constructive date as "not earlier than" (rather than "on") March 15 of the following year. Since, however, there is no other provision under which payments of the estimated tax could be "deemed" to have been made later than they actually were, the necessary effect is to fix March 15 as the constructive date of payment for any estimated tax payments made before that date.

That that was in fact the purpose of § 322(e) is confirmed by the legislative history, and the words "not earlier than" were apparently used instead of "on" only out of an excess of caution to forestall any claim that payments actually made *after* that date should be back-dated. The versions of the bill initially reported by the committees in fact used the word "on,"[4] and the change to "not earlier than" was simply one of a number of technical changes offered on the floor of the Senate by Senator George of the Finance Committee "with the approval of the Treasury." 89 Cong. Rec. 4285–4286. The conference committee accepted the change, but the statement of the House managers made clear that the provision was still intended to fix March 15 as the date "on" which estimated taxes paid prior to that date were to be deemed to have been paid. In terms dispositive of this case, the conference report stated (H. Rep. No. 510, 78th Cong., 1st Sess., p. 54):

> All such payments of estimated tax are for the purpose of the provisions of law relating to refund or credit of the tax imposed by chapter 1, including the provisions relating to interest on overpayments of such tax, deemed to have been paid on the fifteenth day of the third month following the close of the taxable year.

It follows from the foregoing that the refund petitioners sought was barred by the statute of limita-

[4] See H. Rep. No. 401, 78th Cong., 1st Sess., p. 36; S. Rep. No. 221, 78th Cong., 1st Sess., p. 40. The wording was drawn from an earlier provision applicable to the victory tax. See Revenue Act of 1942, § 172(e), 56 Stat. 798.

tions. The claim for refund was not filed until February 15, 1960, and under § 322(b)(2)(A) any refund was thus limited to amounts paid after February 15, 1957 (*i.e.*, during the three preceding years). The last payment involved here was made in fact on January 15, 1954, and in legal contemplation (under § 322(e)) on March 15, 1954. Both of those dates were long prior to February 15, 1957, and refund of the payments was accordingly barred.

*c.* What has been said about the statutory provisions governing the payment and application of estimated taxes fully differentiates the payment of such taxes from the "deposit" made in *Rosenman* v. *United States*, 323 U.S. 658.

In the *Rosenman* case, the executors of an estate obtained a two-month extension for filing the estate tax return but not for payment of the tax. On the original due date, they delivered a check for $120,000 to the Collector with a letter stating that it was being paid "under protest and duress, and solely for the purpose of avoiding penalties and interest" and that the executors contended that not all of that amount was legally due. The payment, in accordance with established practice, was credited to a "suspense" account and no assessment was entered. Two months later, the executors filed a return showing a tax due of some $80,000, upon receipt of which an assessment in that amount was entered and $80,000 of the credit applied against it. After auditing the return, the Commissioner assessed a deficiency and applied the remaining $40,000 credit in partial satisfaction of it. A claim for refund for part of the $40,000 was filed

within three years of the assessment of the deficiency but more than three years after the initial delivery of the check. The Court held that, for purposes of a three-year statute of limitations on the refund of estate taxes "alleged to have been erroneously or illegally assessed or collected," the $40,000 was not a payment of tax until the assessment of the deficiency. Not until then, the Court said, could there be a claim for taxes "erroneously * * assessed"; the prior remittance "did not discharge what [the taxpayer] deemed a liability nor pay one that was asserted," was not treated as a payment of tax by the government (for purposes either of assessment or of allowing interest on overpayments), and was merely a "deposit" or a "payment in escrow" made to stop the running of interest (323 U.S. at 661–662).

Among the many fundamental differences between the "deposit" made in the *Rosenman* case and a payment of estimated tax under § 59 are these: there is an independent statutory duty to pay the estimated tax and a remittance made, without express reservation, as payment of the estimated tax does "discharge" what the taxpayer "deems" a liability; as contemplated by § 59(d), amounts paid as estimated tax are immediately assessed and applied as "payment on account of the tax for the taxable year"; and the statute specifically prescribes the date on which estimated taxes are to be deemed to have been paid, both for purposes of the statute of limitations and for purposes of the allowance of interest on overpayments. In short, payments of "the estimated tax" imposed by § 59 are governed by a specific statutory

scheme wholly unlike anything at issue in the *Roseman* case, and that decision has no bearing here.

2. Although for the reasons given above the decision below is clearly right, petitioners are correct in asserting that the result is in conflict with that reached by the Ninth Circuit in *Schmidt* v. *Commissioner*, 272 F. 2d 423. In that case the court, relying on the *Roseman* case, held that estimated tax payments made in 1944 "did not constitute payment of the tax at that time for the purpose of starting the running of the statute of limitations" and that limitations did not begin to run on the recovery of those payments until the filing of a delinquent return in 1952 (272 F. 2d at 428). In so holding, however, the Ninth Circuit did not cite or discuss any of the provisions creating and defining the duty to pay the estimated tax (§§ 58 and 59), treating its payment as a "payment on account of the tax for the taxable year" (§ 59(d)), or prescribing the time when the estimated tax shall be deemed to have been paid specifically for limitations purposes (§ 322(c)). In view of the court's omission even to consider the relevant statutory provisions, that decision can hardly be taken as an authoritative ruling on the question by the Ninth Circuit. For that reason, although the decisions are inconsistent in result, there is not, we submit, a viable conflict of the kind requiring resolution by this Court. The Ninth Circuit should be allowed to reconsider its prior decision in the light of the relevant statutory provisions and the clarification of the issue by the court below. Only if it should then ad-

here to its prior decision in the *Schmidt* case would the issue be ripe for resolution by this Court.[5]

The question, moreover, is limited to cases governed by the 1939 Code and is thus of no continuing importance. If § 322(e) is not an absolute barrier to the result reached in the *Schmidt* case, it is only because the "not earlier than" language of § 322(e) at least literally leaves open the possibility that the date of "payment" could be later than the prescribed date. The 1954 Code, however, removes the possibility by substituting "on" in the place of "not earlier than." See S. Rep. No. 1622, 83d Cong., 2d Sess., p. 587. Section 6513(b) of the 1954 Code provides:

> * * * For purposes of section 6511 or 6512 [the limitations provisions replacing § 322 of the 1939 Code], any amount paid as estimated income tax for any taxable year shall be deemed to have been paid on the last day prescribed for filing the return under section 6012 for such taxable year (determined without regard to any extension of time for filing such return).

Whatever room there may have been for doubt under the 1939 Code has thus been eliminated under the 1954 Code, and we are unaware of any other cases still pending under the 1939 Code which raise the issue. The question accordingly appears to be a dead issue for all practical purposes, and certiorari would

[5] We acknowledge that, for the reason next stated, the question is not likely again to come before the Ninth Circuit, but that surely provides no *more* reason for immediate review by this Court.

not be warranted even if the conflict were more firmly set than it seems to us to be.[6]

## CONCLUSION

For the reasons stated, the petition for certiorari should be denied.

Respectfully submitted,

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JULY 1963.

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[6] Petitioner also alleges a conflict with *Plankinton v. United States*, 267 F. 2d 278 (C.A. 7). In that case, however, the taxpayer had obtained an extension of time for filing his return for the year involved and in fact filed his return within the time as extended. Although there is language in the opinion inconsistent with the rationale of the decision below, all the court actually held was that § 322(e) does not "have the effect of establishing [March 15] as the date of payment for commencing the limitation period for refund purposes *where, as in the instant case*, the time at which the taxpayer's liability is to be defined and determined has been extended in conformity with other provisions of the law" (267 F. 2d at 280 (emphasis added)). In any event, that case was also governed by the 1939 Code and the opinion specifically relied upon the "not earlier than" wording of § 322(e) that was replaced by "on" in § 6513(b) of the 1954 Code. Section 6513(b) also expressly provides that the estimated taxes shall be deemed paid on the due date of the return "determined without regard to any extension of time for filing such return," which even more explicitly precludes the result of the *Plankinton* case.

# APPENDIX

## INTERNAL REVENUE CODE OF 1939 (AS AMENDED, 26 U.S.C., 1952 ED.)

SEC. 58. DECLARATION OF ESTIMATED TAX BY INDIVIDUALS.

(a) *Requirement of Declaration.*—Every individual * * * shall, at the time prescribed in subsection (d), make a declaration of his estimated tax for the taxable year if—

(1) his gross income from wages (as defined in section 1621) can reasonably be expected to exceed the sum of $4,500 plus $600 with respect to each exemption provided in section 25(b); or

(2) his gross income from sources other than wages (as defined in section 1621) can reasonably be expected to exceed $100 for the taxable year and his gross income to be $600 or more.

* * * * *

SEC. 59. PAYMENT OF ESTIMATED TAX.

(a) *In General.*—The estimated tax shall be paid as follows:

* * * * *

(4) If the declaration is filed after September 15 of the taxable year, and is not required by section 58(d) to be filed on or before September 15 of the taxable year, the estimated tax shall be paid in full at the time of the filing of the declaration.

* * * * *

(d) *Payment as part of tax for taxable year.*—Payment of the estimated tax, or any installment

thereof, shall be considered payment on account of the tax for the taxable year. Assessment in respect of the estimated tax shall be limited to the amount paid.

SEC. 60. SPECIAL RULES FOR APPLICATION OF SECTIONS 58 AND 59.

(a) *Farmers.*—In the case of an individual whose estimated gross income from farming for the taxable year is at least two-thirds of the total estimated gross income from all sources for the taxable year, in lieu of the time prescribed in section 58(d), the declaration for the taxable year may be made at any time on or before January 15 of the succeeding taxable year; * * *.

* * * * * *

SEC. 322. REFUNDS AND CREDITS.

(a) *Authorization.*—

(1) *Overpayment.*—Where there has been an overpayment of any tax imposed by this chapter, the amount of such overpayment shall be credited against any income, war-profits, or excess-profits tax or installment thereof then due from the taxpayer, and any balance shall be refunded immediately to the taxpayer.

* * * * * *

(b) *Limitation on Allowance.*—

* * * * * *

(2) *Limit on amount of credit or refund.*—The amount of the credit or refund shall not exceed the portion of the tax paid—

(A) If a return was filed by the taxpayer, and the claim was filed within three years from the time the return was filed, during the three

years immediately preceding the filing of the claim.

* * * * *

(e) *Presumption as to Date of Payment.*—For the purposes of this section, any tax actually deducted and withheld at the source during any calendar year under Subchapter D of Chapter 9 shall, in respect of the recipient of the income, be deemed to have been paid by him not earlier than the fifteenth day of the third month following the close of his taxable year with respect to which such tax is allowable as a credit under section 35. For the purposes of this section, any amount paid as estimated tax for any taxable year shall be deemed to have been paid not earlier than the fifteenth day of the third month following the close of such taxable year.

* * * * *

SEC. 3770. AUTHORITY TO MAKE ABATEMENTS, CREDITS, AND REFUNDS.

* * * * *

(c) *Rule Where No Tax Liability.*—An amount paid as tax shall not be considered not to constitute an overpayment solely by reason of the fact that there was no tax liability in respect of which such amount was paid.

U.S. GOVERNMENT PRINTING OFFICE: 1958